



MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, APRIL 17, 2007

The Council of the City of San José convened in regular session at 9:30 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chirco, Constant, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - Cortese. (Excused)

Vacant: - Council District 4.

Upon motion unanimously adopted, Council recessed at 9:31 a.m. to a Closed Session in Room W133, (A) to confer with Legal Counsel pursuant to: Government Code Section 54956.9 with respect to anticipated litigation, subsection (b) with significant exposure in two (2) matters; (B) to confer with San José Police Department and Police Chief with respect to: Threat to Public Services or Facilities.

By unanimous consent, Council recessed from the Closed Session at 10:30 a.m. and reconvened at 1:31 p.m. in the Council Chambers.

Present: Council Members - Campos, Chirco, Constant, Cortese, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - None.

Vacant: - Council District 4.

INVOCATION

Pat de Guzman, Northside Community Center, honored two World War II Veterans in memory of "Bataan Day". (District 4)

PLEDGE OF ALLEGIANCE

Mayor Reed and the 2nd grade Class from Sherman Oaks Elementary, led the Pledge of Allegiance.

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved, Items 2.1 and 3.1 were deferred to April 24, 2007, Item 9.1 was deferred to May 1, 2007 and Item 1.4 was heard in the evening. (10-0.)

Mayor Reed led a moment of silence for the thirty three victims of the April 16, 2007 shooting massacre at Virginia Tech University.

CEREMONIAL ITEMS

1.1 Presentation of a commendation to the Sunshine Reform Taskforce Team for their exemplary dedication and valuable contributions to the City organization. (City Manager's Office/Mayor)

Action: Mayor Reed and City Manager Les White recognized and commended the Sunshine Reform Taskforce Team for their excellent dedication and important contributions to the City of San José.

1.2 Presentation of a commendation and donation to "Fit for Learning", a beneficiary of the Webcor San José King-of-the-Mountain-Ride. (Liccardo/Economic Development)L

Action: Mayor Reed, Council Member Liccardo and Director of Economic Development Paul Krutko recognized and commended "Fit for Learning", a beneficiary of the Webcor San José King-of-the-Mountain-Ride. Carl Guardino accepted a check on behalf of "Fit for Learning".

1.3 Presentation of a commendation to Charles W. Davidson for his exemplary philanthropic leadership and outstanding commitment to the City of San José. (Nguyen/Pyle)

Action: Mayor Reed and Council Members Nguyen and Pyle recognized and commended Mr. Charles W. Davidson for his outstanding philanthropic leadership and commitment to the City of San José.

1.5 Presentation of a commendation to Barry Del Buono and EHC Lifebuilders for their ongoing efforts to protect human rights and their long-term contributions toward building a better community for all of our residents now and in the future. (Nguyen/Liccardo/ Human Rights Commission)

Action: Dropped, per Administration.

- 1.6 Presentation of a commendation recognizing ABL Properties for exemplary service and support to residents affected by the Branham House Apartments fire that occurred on March 8, 2007. (Housing)**
(Deferred from 4/3/07 – Item 1.3)

Action: Mayor Reed and Director of Housing Leslye Krutko recognized and commended ABL Properties for their outstanding service to the residents affected by the Branham House Apartment fire.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (9-0-1. Absent: Nguyen)

- 2.1 (a) Current Minutes**
(b) Past Minutes
(1) Regular minutes of October 3, 2006
(2) Special Council minutes of October 10, 2006
(3) Regular minutes of October 17, 2006
(4) Regular minutes of October 24, 2006
(5) Regular minutes of October 31, 2006
(Deferred from 4/3/07 – Item 2.1)

Action: Deferred to April 24, 2007, per City Clerk, under Orders of the Day.

- 2.2 (a) ORD. NO. 28007 – Amending Chapter 9.10 of Title 9 of the San José Municipal Code by amending Sections 9.10.1030, 9.10.1100, 9.10.2430, and 9.10.2440 to revise the provisions relating to contaminated recyclables carts, multi-family container set-outs, and the Construction and Demolition Debris Deposit Program.**

Action: [Ordinance No. 28007](#) was adopted. (9-0-1. Absent: Nguyen)

- (b) ORD. NO. 28010 – Rezoning certain real property situated at the west side of Spar Avenue, approximately 130 feet northerly of Olin Avenue to R-1-8 Single Family Zoning District. C06-114**

Action: [Ordinance No. 28010](#) was adopted. (9-0-1. Absent: Nguyen)

- (c) ORD. NO. 28011 – Rezoning certain real property situated in the LI Light Industrial Zoning District to A(PD) Planned Development Zoning District. PDC06-040**

Action: [Ordinance No. 28011](#) was adopted. (9-0-1. Absent: Nguyen)

- 2.3 (a) **Amending Chapter 9.44 of Title 9 of the San José Municipal Code to authorize the Director of Aviation to designate smoking and non-smoking areas at all outdoor areas at the Norman Y. Mineta San José International Airport.**
- (b) **Amending Chapter 25.08 of Title 25 of the San José Municipal Code to increase the authority of the Director of Aviation to execute leases, licenses, exclusive use permits and other commercial activity agreements with terms in excess of 3 years and a total value of up to \$250,000.**
- CEQA: Resolution Nos. 67380 and 71451, File No. PP07-046. (Airport)**

Documents Filed: Memorandum from Director of Aviation William Sherry, dated March 26, 2007, recommending approval of ordinances.

Action: [Ordinance No. 28016](#), entitled: “An Ordinance of the City of San José Amending Chapter 9.44 of Title 9 of the San José Municipal Code by Amending Section 9.44.045 Entitled ‘Airport Smoking Regulations’ Authorizing the Director of Aviation to Designate Smoking and Non Smoking Areas at All Outdoor Areas at the Norman Y. Mineta San José International Airport” and [Ordinance No. 28017](#), entitled: “An Ordinance of the City of San José Amending Part 3 of Chapter 25.08 of Title 25 of the San José Municipal Code by Amending Sections 25.08.300, 25.08.310, 25.08.500, 25.08.1320, 25.08.1340 and 25.08.1510 to Increase the Authority of the Director of Aviation to Execute Leases, Licenses, Exclusive Use Permits and Other Commercial Activity Agreements with Terms in Excess of 3 Years and a Total Value of Up to \$250,000”, were passed for publication. (9-0-1. Absent: Nguyen)

- 2.4 **Adoption of a resolution authorizing the City Attorney to negotiate and execute a third amendment to the agreement with Renne Sloan Holtzman & Sakai LLP for legal services in connection with labor relations and negotiations, modifying the scope of services, increasing compensation by \$300,000, for a total amount not to exceed \$725,000, and extending the term through June 30, 2009. (City Attorney)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated April 5, 2007, recommending adoption of a resolution.

Action: [Resolution No. 73727](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Attorney to Negotiate and Execute a Third Amendment to the Agreement with Renne Sloan Holtzman & Sakai, LLP, Modifying the Scope of Services, Extending the Term, and Increasing Compensation by \$300,000, for a Total Amount Not To Exceed \$725,000”, was adopted. (9-0-1. Absent: Nguyen)

- 2.5 **Request for an excused absence for Vice Mayor Cortese from the Regular Meeting of the Transportation & Economic Committee of April 2, 2007 due to Authorized City Business: Internal District 8 Meeting. (Cortese)**

Documents Filed: Memorandum from Vice Mayor Cortese, dated April 2, 2007, requesting an excused absence.

Action: The excused absence was approved. (9-0-1. Absent: Nguyen)

- 2.6 Adoption of a resolution authorizing the Director of Finance to execute the first amendment to the agreement between the City of San José and Acme Building Maintenance for Custodial Service at the Norman Y. Mineta San José International Airport by correcting the insurance requirement for janitorial services and adding services resulting in an increase in compensation by \$180,000 from \$216,000 to a not-to-exceed amount of \$396,000 for the first year of the Agreement. CEQA: Not a Project. (Finance)**

Action: Deferred to April 24, 2007, per Administration.

- 2.7 Adoption of a resolution summarily vacating a portion of the Storm Drainage Easement lying within Lands of Braddock & Logan at 143 Fleming Avenue. Council District 5. (Public Works)**

Documents Filed: Replacement memorandum from Director of Public Works Katy Allen, dated April 11, 2007, transmitting that the developer needs to create a new storm drain easement (SDE) in a portion of the SDE that is being vacated, the City will only be vacating a portion of the existing SDE and recommending adoption of a resolution.

Action: Resolution No. 73728, entitled: “A Resolution of the Council of the City of San José Summarily Vacating a Portion of the Storm Drain Easement Lying within the Lands of Braddock & Logan at 143 Fleming Avenue”, was adopted. (9-0-1. Absent: Nguyen)

- 2.8 Adoption of a resolution authorizing the Director of Finance to:**
- (a) Execute an agreement with The Active Network Inc. in an amount not to exceed \$253,398 for the purchase and installation of an Integrated Cashiering System, including software, hardware, professional services, five years of maintenance and support, shipping, and applicable sales taxes.**
 - (b) Execute change orders not to exceed a 15% contingency amount of \$38,010 to cover unanticipated changes or requirements related to the design, implementation, maintenance and support of the system over a five-year period.**

CEQA: Not a Project. (Finance)
(Deferred from 4/10/07 – Item 2.11)

Action: Deferred to April 24, 2007, per Administration.

- 2.9 Approval of the appointment of Lloyd L. Tran to the work2future Board (formerly Silicon Valley Workforce Investment Network Board). (Mayor)**
(Rules Committee referral 4/11/07)

Documents Filed: Memorandum from Mayor Reed, dated April 5, 2007, recommending the appointment of Mr. Tran.

Action: The appointment of Lloyd L. Tran to the work2future Board was approved. (9-0-1. Absent: Nguyen)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.1 Report of the Rules and Open Government Committee – March 28, 2007

Mayor Reed, Chair

- (a) City Council
 - (1) Review New Add Items to April 3, 2007 Agenda
 - (2) Review April 10, 2007 Draft Agenda
- (b) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (c) Legislative Update
 - (1) State
 - (a) Acceptance of the March 2007 State Legislative Bill Matrix. (Manager's Office)
(Continued from 3/21/07)
 - (2) Federal
- (d) Meeting Schedules
- (e) The Public Record
- (f) Appointments to Boards, Commissions and Committees
- (g) Rules Committee Reviews, Recommendations and Approvals
- (h) Review of Council Committee Agendas
- (i) Open Government Initiatives
 - (1) Reed Reforms
 - (a) Acceptance of staff's proposed presentation on ethics to the Council in response to Reed Reform #26. (City Manager/City Attorney)
 - (2) Sunshine Reform Task Force
 - (a) Update on current proposals and outstanding issues for Phase 1 recommendations including requirements for: (1) Public meetings, (2) Closed session, (3) Public information. (Sunshine Reform Task Force)
 - (3) Significant Public Records Act Requests
 - (4) Council Policy Manual Update
- (j) Open Forum
- (k) Adjournment

Action: Deferred to April 24, 2007, per City Clerk, under Orders of the Day.

3.3 Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Excise Tax Fund:

- (a) **Increase the estimate for Earned Revenue by \$2,358,510 to recognize the loan repayment from the American GI Forum.**
 - (b) **Decrease Ending Fund Balance by \$218,721.**
 - (c) **Establish a transfer to the San José Redevelopment Agency in the amount of \$2,474,645.**
 - (d) **Establish a transfer to the General Fund in the amount of \$102,586.**
- CEQA: Not a Project. (City Manager's Office)**

Documents Filed: Memorandum from Budget Director Larry Lisenbee, dated March 26, 2007, recommending adoption of appropriation ordinance and funding sources resolution amendments.

3.3 (Cont'd.)

Action: Upon motion by Council Member Nguyen, seconded by Vice Mayor Cortese and carried unanimously, [Ordinance No. 28018](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 27801 to Appropriate Monies in the Construction Excise Tax Fund to Recognize the Repayment of the American GI Forum Loan; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 73729](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 73265 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2006-2007 to Adjust Revenues in the Construction Excise Tax Fund", were adopted, with Staff directed to place the funds into the Contingency Reserve to be used towards assisting the Mexican Heritage Corporation. (10-0.)

- 3.4 (a) **Approval of the Fourth Amendment to the Operation and Maintenance Agreement between the City and Mexican Heritage Corporation to provide one time additional funding in an amount not to exceed \$175,000 for the operation and maintenance of the Mexican Heritage Plaza through June 30, 2007.**
- (b) **Adoption of the following appropriation ordinance amendments in the General Fund:**
- (1) **Establish a City-Wide appropriation to the City Manager's Office for Mexican Heritage Corporation in the amount of \$175,000;**
 - (2) **Reduce the General Fund Contingency Reserve by \$175,000.**
- (Public Works/City Manager's Office)**

Documents Filed: (1) Memorandum from Chief Deputy City Manager Kay Winer and Budget Director Larry Lisenbee, dated April 5, 2007, recommending approval to amend the agreement between the City and Mexican Heritage Corporation. (2) Nine emails from the public regarding the approval of the fiscal actions for the Mexican Heritage Corporation.

Chief Deputy City Manager Kay Winer provided a brief presentation. Council questions to Chief Deputy City Manager Winer and City Auditor Gerald Silva followed.

Motion: Council Member Campos moved approval of the Staff recommendation including: Staff to return with criteria recommended by the Arts Commission Program Committee for the Arts Stabilization Fund, the City Manager's Staff to return with recommendations and suggestions on how to deal with other nonprofit groups and how they qualify for funding, if not considered a loan and the Mexican Heritage Corporation to bring forward a plan to Council by the end of June regarding the recruitment and selection of a Development Director. Vice Mayor Cortese seconded the motion.

3.4 (Cont'd.)

Public Comments: Marcella Davison Aviles, Mexican Heritage Corporation (MHC), mentioned that MHC has its financials online. Speaking in support of the agreement with MHC were Sharon Gustafson, Arts Commission, Ross Signorino, Michael Miller, American Musical Theatre of San José, and Daniel Fenton, Team San José.

Action: On a call for the question, the motion carried unanimously, the Fourth Amendment to the Operation and Maintenance Agreement between the City of San José and the Mexican Heritage Corporation to provide one time additional funding in an amount not to exceed \$175,000 for the operation and maintenance of the Mexican Heritage Plaza through June 30, 2007 was approved, [Ordinance No. 28019](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 27801 to Appropriate Monies in the General Fund for the Mexican Heritage Corporation; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, was adopted, as amended, including: (1) Staff to return with criteria recommended by the Arts Commission Program Committee for the Arts Stabilization Fund. (2) The City Manager’s Staff to return with recommendations and suggestions on how to deal with other nonprofit groups and how they qualify for funding, if not considered a loan. (3) Mexican Heritage Corporation to bring forward a plan to Council by the end of June regarding the recruitment and selection of a Development Director. (4) Staff to return with recommendations to implement future online disclosures for nonprofits.

3.5 **Report of the Rules and Open Government Committee – March 21, 2007** **Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated March 21, 2007.

(a) City Council

(1) Review New Add Items to March 27, 2007 Agenda

The Committee approved the March 27, 2007 City Council Agenda.

(2) Review April 3, 2007 Draft Agenda

The Committee approved the April 3, 2007 Draft City Council Agenda with four additions.

(b) Redevelopment Agency items reported out at Redevelopment Agency meeting

3.5 Report of the Rules and Open Government Committee – March 21, 2007 (Cont'd.)
Mayor Reed, Chair

(c) Legislative Update

(1) State

- (a) Acceptance of the March 2007 State Legislative Bill Matrix. Attachment: Memorandum from Director Intergovernmental Relations Betsy Shotwell, dated March 13, 2007, recommending acceptance of the March 2007 State Legislative Bill Matrix.

The Committee accepted the report.

(2) Federal

- (a) National League of Cities Congressional Conference Summary Report (verbal).

The Committee accepted the report.

(d) Meeting Schedules

- (1) Setting Hearing for Spring 2007 for General Plan Amendments and Initiating the Reestablishment of a fall Annual Review of the General Plan. Attachment: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated March 19, 2007, recommending setting the Hearing for the Spring 2007 General Plan Amendments and Initiating the Reestablishment of a fall Annual Review of the General Plan.
(Deferred from 3/14/07)

The Committee accepted the recommendation.

- (2) Request to set study session for the Evergreen*East Hills Vision Strategy for Monday, April 30, 2007, 1-4 p.m. Attachment: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated March 15, 2007, recommending setting a study session for the Evergreen*East Hills Vision Strategy.

The Committee accepted the recommendation.

- (e) The Public Record. Attachment: Memorandum from City Clerk Lee Price, dated March 16, 2007, transmitting items for the Public Record and Administration for the period of March 9-15, 2007.

The Committee noted and filed the Public Record.

3.5 Report of the Rules and Open Government Committee – March 21, 2007 (Cont'd.) Mayor Reed, Chair

(f) Appointments to Boards, Commissions and Committees

- (1) Appointment to the Airport Noise Advisory Committee. Attachment: Memorandum from Director of Aviation William Sherry, dated March 7, 2007, recommending appointment of Mr. Joe Kornder.

The Committee approved the appointment of Mr. Joe Kornder.

- (2) Council Committee Appointments. Attachment: Memorandum from Mayor Reed, dated March 16, 2007, recommending approval of the appointments.

The Committee accepted the recommendation and forwarded the appointments to the City Council on March 27, 2007.

(g) Rules Committee Reviews, Recommendations and Approvals

- (1) Request to Add to City Auditor's 2006-07 Work Plan: Review Fee Payments by City's Franchised Haulers. Attachment: Memorandum from City Auditor Gerald Silva, dated March 6, 2007, recommending approval of the request.

The Committee approved the request.

(h) Review of Council Committee Agendas - There were none.

(i) Open Government Initiatives - There were none.

(j) Open Forum - None were presented.

(k) Adjournment - The meeting was adjourned at 2:40 p.m.
(Deferred from 4/10/07 – Item 3.2)

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Williams and carried unanimously, the Rules and Open Government Committee Report and the actions of March 21, 2007, were accepted. (10-0.)

NEIGHBORHOOD SERVICES

5.2 Approval of the Strong Neighborhoods Initiative Winchester Neighborhood Improvement Plan Amendment as the renewed City/community vision for the future of the Winchester Area. CEQA: Resolution No. 71045. (Planning, Building and Code Enforcement.)

Action: See Item 9.1 for Council Action.

TRANSPORTATION & AVIATION SERVICES

6.1 Report of the Transportation and Environment Committee – April 2, 2007 Council Member Williams, Chair

Documents Filed: The Transportation and Environment Committee Report dated

- (a) Review of Urban Environmental Accords Strategic Plan and Progress Towards Goals Attainment. Attachment: Memorandum from Director of Environmental Services John Stufflebean, dated March 20, 2007, recommending acceptance of the report.
(Deferred from 3/5/07)

The Committee accepted the report.

- (b) Las Plumas Household Hazardous Waste Facility Site Plan Development. Attachment: Memorandum from Director of Environmental Services John Stufflebean, dated March 20, 2007, recommending acceptance of the report.

The Committee accepted the report.

- (c) Update on the Transportation Infrastructure Maintenance Needs Master Plan. Attachment: Memorandum from Director of Transportation James Helmer, dated March 23, 2007, recommending acceptance of the report.

The Committee accepted the report.

- (d) Report on Progress of Project Delivery with PG&E on Undergrounding Utility Program. Attachment: Memorandum from Director of Public Works Katy Allen, dated March 20, 2007, recommending acceptance of the report.

The Committee accepted the report.

- (e) City Hall and Other Facilities Maintenance Issues. Attachment: Memorandum from Director of General Services Peter Jensen, dated March 22, 2007, recommending acceptance of the report.

The Committee accepted the report.

- (f) Update on Americans With Disabilities Act Compliance Review.

Dropped per Administration.

**6.1 Report of the Transportation and Environment Committee – April 2, 2007 (Cont'd.)
Council Member Williams, Chair**

- (g) Stormwater Program Status Report and Discuss Needs for Storm Water Collection System/Reserve and Potential Fee Adjustments. Attachment: Memorandum from Director of Environmental Services John Stufflebean, Director of Public Works Katy Allen and Director of Transportation James Helmer, dated March 27, 2007, recommending acceptance of the report with direction to staff.

The Committee accepted the report, with Staff directed to proceed with the detailed assessment of activities, programs and funding needs associated with the Stormwater Program priorities and develop a scope of work and funding resources needs in order to complete a comprehensive analysis of the condition and infrastructure needs of the Storm Sewer System.

- (h) Update on Key Aspects of Recycle Plus Transition. Attachment: Memorandum from Director of Environmental Services John Stufflebean, dated March 20, 2007, recommending acceptance of the report.

The Committee accepted the report.

- (i) Verbal Update Report on Taxi Cabs.

The verbal update was heard. No action was taken.

- (j) Oral Petitions - None were presented.

- (k) Adjournment - The meeting was adjourned at 4:38 p.m.

Action: Upon motion by Council Member Williams, seconded by Council Member Liccardo and carried unanimously, the Transportation and Environment Committee Report and the actions of April 2, 2007, were accepted. (10-0.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 (a) Direct staff to send notices, in accordance with Proposition 218 requirements, to San José property owners for receipt no later than May 4, 2007, concerning the following proposed sewer service and use charge and storm sewer service charge rates increases:**
- (1) Sewer Service and Use Charge rate increases for 2007-08 - It is proposed that the residential rate notice provide for an increase of up to 9% for Fiscal Year 2007-08 and that the commercial rate notice provide for proposed increases for Fiscal Year 2007-08 of approximately 3% to 15% for commercial services, depending on the nature of the user's sewage discharge.**

- 7.1 (a) (2) **Storm Sewer Service Charge rate increases for 2007-08 - It is proposed that the residential rate notice would provide for an increase of up to 9% for Fiscal Year 2007-08 and that the commercial rate notice provide for an increase of up to 10% for Fiscal Year 2007-08.**
- (b) **Direction to the Administration to deviate from the past practice of noticing rate increases for three Fiscal Years and proceed with a one-year rate increase notice for FY 2007-08, resulting from the likelihood that future rate increases will be higher than the above proposed rates in order to adequately address the infrastructure needs of the sewer and storm water systems.**
- CEQA: Not a Project. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stuffebean, dated March 26, 2007, recommending direction to Staff as outlined above.

Director of Environmental Services John Stuffebean presented a brief overview of the Proposition 2.18 Proposal and responded to Council questions.

Council Member Liccardo asked about acceptance of protests by email and fax. City Attorney Richard Doyle replied that there is no legal impediment, as set forth in the notices. City Clerk Lee Price responded she will work with Information Technology to set up an email account to receive protests.

Motion: Council Member Williams moved approval of the Staff recommendation. Council Member Chirco seconded the motion.

Council Members Liccardo, Constant, Oliverio, Vice Mayor Cortese and Mayor Reed objected to the motion. Council Member Liccardo stated he won't support because the alternative three year model saves money.

The motion failed. (4-6. Noes: Constant, Cortese, Liccardo, Nguyen, Oliverio; Reed.)

Motion: Council Member Liccardo moved approval of the Staff alternative recommendation, including change of by permit protest by email and fax, notices mailed once this year, including noticing all ratepayers about all increases for the following three years. Council Member Constant seconded the motion.

Discussion followed with direction as noted in "Action".

Council Members Chirco, Campos and Williams objected to the motion because communications with the community will be negatively affected.

Council Member Williams requested that Staff report back at the end of the year regarding the savings.

7.1 (Cont'd.)

Action: On a call for the question, the motion carried, the Staff Policy Alternative was approved, with Staff directed to send notices to San José property owners for receipt no later than May 4, 2007 concerning the following: (1) Sewer Service and Use Charge rate increases over the next three years – The residential rate notice for an annual increase of up to 9% for Fiscal Year 2007-08, and increases up to 15% in Fiscal Years 2008-09 and 2009-10. The commercial rate notice shall provide for proposed increases for Fiscal Year 2007-08 of approximately 3% to 15% for commercial services, depending on the nature of the user's sewage discharge; and that the notice also provide for possible annual increases in Fiscal Years 2008-09 and 2009-10 of approximately 6% up to 25%, depending on the nature of the user's sewage discharge. (2) Storm Sewer Rate Charge rate increases over the next three years – The residential rate notice would provide for annual increases of up to 9% for Fiscal Year 2007-08 and up to 30% for Fiscal Years 2008-09 and 2009-10. The commercial rate notice would provide for an increase of up to 10% for Fiscal Year 2007-08 and increases of up to 31% for 2008-09 and 2009-10. (3) Permit protest by email and fax. (4) Notice all rate payers by mail this year only and make note in that notice the rates will increase over the next three years. (7-3. Noes: Campos, Chirco, Williams.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

9.1 Approval of the Strong Neighborhoods Initiative Winchester Neighborhood Improvement Plan Amendment as the renewed City/community vision for the future of the Winchester Area. CEQA: Resolution No. 71045. (Planning, Building and Code Enforcement.)

Action: Deferred to May 1, 2007, per Administration, under Orders of the Day.

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>		<u>Lots/Units</u>	<u>Type</u>
9531	Southwest corner of Rue Mirrasou and Mosher Drive	8	Pinn Construction	Brothers	51 Lots/ 51 Units	SFD
9894	West side of Paige Street, 260 feet north of Chiechi Avenue	6	Joseph Linh Do		5 Lots/ 4 Units	SFA

OPEN FORUM

Documents Filed: Letter from Paul Manley, dated April 17, 2007, regarding filing a formal complaint on the delinquent notice #BL10289.

- (1) Paul Manley presented a formal complaint and request for records regarding a Code Enforcement issue.
- (2) Robert Apgar voiced personal observations.
- (3) William Garbett voiced personal opinions.
- (4) Mark Trout presented religious points of view.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 4:18 p.m.

RECESS/RECONVENE

The City Council recessed at 4:18.m. from the afternoon Council Session and reconvened at 7:00p.m. in the Council Chambers, City Hall.

Present: Council Members - Chirco, Constant, Cortese, Liccardo, Nguyen, Pyle, Williams; Reed.

Absent: Council Members - Campos. (Excused)

Vacant: - Council District 4.

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Vice Mayor Cortese, seconded by Council Member Liccardo, and carried unanimously, the below noted continuances and actions were taken as indicated. (9-0-1. Absent: Campos.)

CEREMONIAL ITEMS

1.4 Presentation of a commendation to Dr. Nguyen Xuan Vinh for his services to the astronautics profession and his distinguished accomplishments in the field of space flight mechanics, both as a researcher and educator. (Nguyen)

Action: Mayor Reed and Council Member Nguyen recognized and commended Dr. Nguyen Xuan Vinh for his services to the astronautics profession and his distinguished accomplishments in the field of space flight mechanics, both as a researcher and educator.

1.7 Presentation of a commendation to Ray Furuta, member of the San José Youth Symphony from District 5. (Campos/Chirco/Pyle) (Deferred from 4/3/07 – Item 1.4)

Action: Mayor Reed and Council Members Chirco and Pyle recognized and commended Ray Furuta, a member of the San José Youth Symphony from District 5. Council Member Campos was not present.

1.8 Presentation of a proclamation declaring the month of May as "Le Hoi Phat Dan Truyen Thong Dan Gian" which is the traditional Buddhist celebration of Buddha's Birthday. (Cortese) (Rules Committee referral 4/11/07)

Action: Mayor Reed and Vice Mayor Cortese recognized the month of May as "Le Hoi Phat Dan Truyen Thong Dan Gian" in the City of San José.

GENERAL PLAN PUBLIC HEARINGS

10.2 Tentative approval for General Plan amendment request to change the Land Use/Transportation Diagram designation from Very Low Density Residential (2 DU/AC) to Medium Low Density Residential (8 DU/AC) on an approximately 0.99-acre site located at the northwesterly corner of Los Gatos-Almaden Road and Warwick Road (14861 and 14879 Los Gatos-Almaden Road) (Owner: Steven and Nancy McVay; Applicant: Cypress Quarters Homes Development Corporation/Contact: Jeff Guinta). CEQA: Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommended approval of Medium Low Density Residential (8 DU/AC) on 0.99 acres (7-0-0).

GP04-09-01 - District 9

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP04-09-01, dated March 8, 2007, declaring a Mitigated Negative Declaration circulated on February 20, 2007. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated March 26, 2007, transmitting the Planning Commission recommendation. (3) Eighteen emails from member of the public regarding the proposed General Plan Amendment Request.

Director of Planning, Building and Code Enforcement Joseph Horwedel presented an overview of the amendment for the property located at the northwesterly corner of Los Gatos-Almaden Road and Warwick Road.

Public Comment: Mayor Reed opened the public hearing. Speaking in opposition to infill housing in the neighborhood were: Michael Schumacher, Todd Hancock, Larry Quezada, Lynn Mendenhall, Susan Quezada, Art Williams, Beatrice Mead, Dorothy Schumacher, David Buttress, Gayle Wetzel, Michael Veazie, Craig Brautigan, Gino Rossi, Kelly Verni and Dennis Savage.

Steve McVay, Property Owner, spoke in favor of the requested General Plan Amendment change. Jeff Guinta, Applicant, stated he would work with neighbors, and the surrounding areas to incorporate their concerns into the design.

Mayor Reed closed the public hearing.

Motion: Council Member Chirco moved approval of the Staff recommendation, with a limit of no more than 5 units. Vice Mayor Cortese seconded the motion.

Extensive Council discussion continued.

Council Member Constant objected to the General Plan Amendment request because there is already heavy traffic congestion, among other problems.

10.2 (Cont'd.)

Action: On a call for the question, the motion carried, the public hearing was closed, Staff/Planning Commission recommendation was tentatively approved, with a limit of no more than 5 units. (8-1-1. Noes: Constant. Absent: Campos.)

- 10.3 Tentative approval for General Plan amendment request to change the Land Use/Transportation Diagram designation from Medium Low Density Residential (8 DU/AC) to Medium Density Residential (8-16 DU/AC) on an approximately 2.34-acre site located on the easterly side of McLaughlin Avenue, approximately 600 feet southerly of Tully Road (2450 to 2492 McLaughlin Avenue) (Owner: Bob Dhillon/Applicant: LPMD Architects/Contact: Anthony Ho). CEQA: Negative Declaration. Director of Planning, Building and Code Enforcement recommended approval of Medium Density Residential (8-16 DU/AC) and Planning Commission recommended denial (3-3-1, Commissioners Campos, Kalra and Platten opposed; Commissioner Dhillon abstained). Because a quorum was not reached, this vote is deemed a negative recommendation pursuant to Title 18, Section 18.08.100.D. GP06-07-02 - District 7**

Documents Filed: (1) Memorandum from Council Member Nguyen, dated April 11, 2007, recommending denial of the applicant's request of the General Plan Amendment to change the land use from 8 DU/AC to 8-16 DU/AC. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC06-087, dated March 8, 2007, recommending approval on the subject General Plan Amendment request with a Mitigated Negative Declaration circulated on February 20, 2007. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated March 26, 2007, transmitting the Planning Commission recommendation. (4) Packet from the McLaughlin Corridor Neighborhood Association, dated April 17, 2007, regarding the subject General Plan Amendment request. (5) Three emails and a Summary of a Survey of Neighbors, dated April 17, 2007, regarding the subject General Plan Amendment request.

Principal Planner Andrew Crabtree presented an outline of the amendment for the property located on the easterly side of McLaughlin Avenue.

10.3 (Cont'd.)

Public Comment: Mayor Reed opened the public hearing.

Speaking in opposition to the development and citing problems such as dangerous traffic congestion, parking problems, negative impacts on the neighborhood: Albert Raska, Jacqueline Nguyen, Tai Nguyen, Hung Nguyen, Duc Vien Temple, Thuong Ngo, Alfonso Medina, Tung Pereira, Tram Nguyen, Hoang-Anh Nguyen, Tom Tran, Khanh Dang, Long Nguyen, William Xing and Daniel Peralta, Kenneth Henry, Moses Ramirez, Marvin Christy, Linda Jeffery, Chuck Jeffery, Sherry Dees, Sam Kimura, and Quoc Tran, McLaughlin Corridor Neighborhood Association.

Speaking in favor of the proposed project: Rita Nijjar, Dana Nguyen, Phan and Samantha Tran.

Anthony Ho, Applicant, spoke to the merits of the proposed development.

Mayor Reed closed the public hearing.

Motion: Council Member Nguyen moved to deny the Applicant's request to amend the San José 2020 General Plan Land Use/Transportation Diagram Designation from Medium Low Density Residential (8 DU/AC) to Medium Density (8-16 DU/AC) on an approximately 2.34 acre site. Council Member Constant seconded the motion.

Council discussion followed.

Council Member Nguyen added that traffic is a problem in this area and there are 200 signatures opposed to this General Plan Amendment request. Council Member Constant concurred that parking is a problem.

Vice Mayor Cortese and Council Member Williams objected to the motion.

Action: On a call for the question, the motion carried, the public hearing was closed and the Application to amend the San José 2020 General Plan Land Use/Transportation Diagram Designation from Medium Low Density Residential (8 DU/AC) to Medium Density (8-16 DU/AC) on an approximately 2.34 acre site was denied. (7-2-1. Noes: Cortese, Williams. Absent:Campos.)

10.4 **Recommend continuance of all General Plan amendment actions to April 24, 2007. (Planning, Building and Code Enforcement)**

Action: Continued to April 24, 2007.

PUBLIC HEARINGS

- 11.2 Administrative Hearing on consideration of an appeal of the Planning Commission's decision to deny a Conditional Use Permit to allow the construction of an outdoor dining patio and storage building for an existing restaurant (Tomato Thyme) on a 0.40 gross acre site, in the CN Neighborhood Commercial Zoning District, located on the south side of Hamilton Avenue approximately 320 feet easterly of Meridian Avenue (1560 Hamilton Avenue) (John D. Smith, Owner). CEQA: Mitigated Negative Declaration.**

CP02-008 - District 6

(Continued from 1/23/07 – Item 11.5 and 3/6/07 – Item 11.2)

Documents Filed: (1) Proof of Publication of Notice of Public Hearing, executed on January 12, 2007, submitted by the City Clerk. (2) Letter from Joan Gallo, Hopkins & Carley, A Law Corporation, dated January 12, 2007, regarding Tomato & Thyme.

Action: Dropped, per Administration.

- 11.3 Consideration of an ordinance rezoning the real property located at the northeasterly corner of Cottle and Poughkeepsie Roads from IP(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to allow the demolition of the existing industrial park buildings (Buildings 025, and 024 and 030) and associated site improvements, the removal of up to 385 trees from the site, and the construction of a new, approximately 204,000 square foot commercial facility (including a retail/commercial use, with a single occupant greater than 100,000 square feet (with a garden center), and other retail/commercial uses) (IBM, Owner). CEQA: Environmental Impact Report (Pending).**

PDC06-003 - District 2

Action: Continued to May 1, 2007, per Administration.

- 11.4 Consideration of a Historic District Designation request to designate as a Historic District the area generally bounded on the north by West San Fernando Street, on the east by Highway 87 & the Santa Clara Valley Transportation Agency Light Rail right-of-way, on the west by Los Gatos creek and on the south by the rear property lines of lots on the north side of Park Avenue, and on the southeast by Sonoma Street and Lakehouse Avenue (Various Owners/City of San José, Applicant). CEQA: Exemption. SNI: Delmas Park. Director of Planning, Building and Code Enforcement and Planning Commission recommended approval while excluding the property at 460 W. San Fernando Street from the proposed Historic District (7-0-0).**

HD07-158 - District 3

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. HD07-158, dated March 7, 2007, recommending approval on the subject rezoning. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated March 29, 2007, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on February 23, 2007, submitted by the City Clerk.

11.4 (Cont'd.)

Public Comment: Mayor Reed opened the public hearing. Jodene Perrin-Gill spoke in support of the Lake House as a Historic District Landmark. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Constant and carried unanimously, the public hearing was closed, the recommendation of the Planning Commission and the Planning Director was approved, and [Resolution No. 73730](#), entitled: "A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Lake House City Landmark Historic District, Generally Bounded on the North by West San Fernando Street, on the East by State Highway 87 and the VTA Light Rail Right of Way, on the West by Los Gatos Creek, and on the South by the Rear Property Lines of Lots on the North Side of park Avenue, and on the Southeast by Sonoma Street and Lakehouse Avenue, as a City Landmark Historic District Possessing a Significant Concentration or Continuity of Site, Building, Structures or Objects Unified by Past Events or Aesthetically by Plan or Physical Development and Directing the City Clerk to Provide Certain Notice of this Resolution", was adopted. (10-0-1. Absent: Campos.)

11.5 **Consideration of an ordinance rezoning the real property located on the north side of Montague Expressway, approximately 550 feet westerly of N 1st Street from IP Industrial Park Zoning District to A(PD) Planned Development Zoning District to allow up to 575 Single-family attached residential units and approximately 2700 square feet of retail commercial uses on a 11.19 gross acre site with the modified Development Standards as listed in the "PDC05-099 Draft Development Standards" dated, April 17, 2007 (Hyundai Merchant Marine, Owner; Legacy Partners Residential, Developer). CEQA: Addendum to the North San José Development Policies Update EIR. Director of Planning, Building and Code Enforcement and Planning Commission recommended approval (7-0-0). PDC05-099 - District 4**

Documents Filed: (1) Supplemental memorandum from City Attorney Richard Doyle, dated April 17, 2007, informing Council of the limitations of authority of cities to impose school fees and exactions, and the affect of the Settlement Agreement over the North San José Area Development Policy Environmental Impact Report litigation on the Santa Clara Unified School District and the City of San José. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-099, dated March 21, 2007, recommending approval on the subject rezoning. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated March 29, 2007, transmitting the Planning Commission recommendation. (4) Proof of Publication of Notice of Public Hearing, executed on March 16, 2007, submitted by the City Clerk.

Rodrigo Orduna, Planning, Building and Code Enforcement and Dave Mitchell, Parks, Recreation and Neighborhood Services presented an overview of the rezoning of the real property located on the north side of Montague expressway and responded to Council questions.

11.5 (Cont'd.)

A brief discussion ensued.

Motion: Council Member Liccardo moved approval of the Staff/Planning recommendation, with a minimum of 4,200 square feet of retail required, or up to 5,000 square feet total. Vice Mayor Cortese seconded the motion.

Public Comment: Mayor Reed opened the public hearing. Jess Couch, Legacy Partners, spoke in favor of the rezoning. Mike Bertram, River Oaks Neighborhood Association expressed concern, stating there are significant issues, including the funding for schools and public safety. Mayor Reed closed the public hearing.

Action: On a call for the question, the motion carried unanimously, the public hearing was closed, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28021](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the North Side of Montague Expressway, 550 Feet Westerly of North First Street to A(PD) Planned Development Zoning District", was passed for publication, as amended, with a minimum of 4,200 square feet of retail required, or up to 5,000 square feet total. (10-0-1. Absent: Campos.)

OPEN FORUM

- (1) Mark Trout presented religious points of view.

ADJOURNMENT

The Council of the City of San José adjourned at 10:25 p.m. in memory of the thirty three victims of the April 16, 2007 shooting massacre at Virginia Tech University.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/4/17-07MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>